

**DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS**

One Judiciary Square
441 Fourth Street, NW
Washington, DC 20001-2714
TEL: (202) 442-9094
FAX: (202) 442-4789

DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND
REGULATORY AFFAIRS

Petitioner

v.

VHI INC. ENTERPRISES
Respondent

Case No.: 2012-DCRA-S702640

NOI No.: S702640

Case No.: 2012-DCRA-S702642

NOI No.: S702642

(Consolidated)

FINAL ORDER

I. Introduction

These consolidated cases arise under the Civil Infractions Act of 1985, as amended (D.C. Official Code §§ 2-1801.01 - 1802.05) and Title 20, Chapter 28 of the District of Columbia Municipal Regulations (“DCMR”). On January 31, 2012, the Government served Notice of Infraction No. S702642 (“the first case NOI”) upon Respondent, V H I Inc., Enterprises (“VHI”) alleging that it violated 20 DCMR 2806.2 (the “Regulation”) by performing trash removal within 300 feet of a residential zone at night.¹ In the first case NOI, the Government alleged that the violation occurred on December 16, 2011, at 1511 U Street, N.W. (the “Property”), and that Respondent had committed four previous violations. The Government sought an enhanced

¹ 20 DCMR 2806.2 provides:

No person shall operate or permit the operation of any refuse collection vehicle in or within three hundred (300) feet of any residential, special purpose, or waterfront zone at nighttime on any day of the week. The terms "operate" and "operation" in this section shall mean the stopping of the vehicle and the collection of trash by the refuse vehicle.

\$8,000 fine authorized for repeat offenders. 16 DCMR 3201.2. Also on January 31, 2012, the Government served Notice of Infraction No. S702640 (the “second case NOI”) on Respondent alleging that on December 21, 2011, Respondent also violated the Regulation. The Government alleged in the second case NOI that the violation occurred at the Property, and sought an additional, enhanced \$8,000 fine due to four previous alleged offenses.

VHI filed Deny pleas to both charges and I scheduled an evidentiary hearing for March 15, 2012. Because these cases involved the same parties as well as common questions of law and fact, I consolidated the first and second case NOIs for the hearing. *See* OAH Rule 2820. At the hearing, VHI’s Safety Manager, Walter Burrell, appeared on its behalf. Civil Infractions Advocate David Lang appeared for the Department of Consumer and Regulatory Affairs (“DCRA”) along with Investigator Cliff Dedrick, who testified. Fabio Leonardi, who filed two trash noise complaints with DCRA prompting it to issue the NOIs, testified by telephone.

At the close of the Government’s case, Mr. Lang requested that I keep the record open for 24 hours to allow the Government to file Office of Administrative Hearings (“OAH”) Final Orders previously issued in cases involving VHI. Mr. Lang asserted that the Final Orders were relevant to the issue of whether VHI was a repeat offender as alleged in the NOIs. I granted this request and required the Government to file these documents and serve copies upon VHI by March 16, 2012. I advised Mr. Burrell that I intended to take official notice of the prior Final Orders unless VHI filed an objection by March 21, 2012. *See* D.C. Official Code § 2-509(b). On March 16, 2012, the Government filed five OAH Final Orders involving seven Notices of Infraction that name VHI as a Respondent. The Government certified service of these documents upon Mr. Burwell; however, VHI did not file any reply or objection. Accordingly, I have taken official notice of the prior OAH Final Orders issued in the cases identified in Section

II, ¶ 12 below. *See* D.C. Official Code § 509(c) (“[In contested cases] [t]he testimony and exhibits, together with all papers and requests filed in the proceeding, and all material facts not appearing in the evidence but with respect to which official notice is taken, shall constitute the exclusive record for order or decision.”)

Based upon the testimony of the witnesses, my evaluation of their credibility, the exhibits admitted into evidence, and the documents with respect to which I have taken official notice, I make the following findings of fact and conclusions of law

II. Findings of Fact

1. On December 16, 2011, at 6:00 a.m., Fabio Leonardi was awakened by a noise from a truck in the alley near his residence at 2013 New Hampshire Avenue, N.W. Upon viewing the alley from his window, he observed and photographed a waste-hauling truck bearing the VHI name and logo located approximately 20 feet from his apartment. Petitioner’s Exhibit (“PX”) 101.
2. On the same day, Mr. Leonardi completed, signed, and submitted a Trash Noise Complaint Form to DCRA alleging that on December 16, 2011, at 6:00 a.m. a truck bearing the VHI name and logo collected waste in the alley between his residence and a nearby restaurant, Pizza Boli (the “Restaurant”). PX 100. The Restaurant’s address is 1511 U Street, N.W.
3. On December 21, 2011, at 5:50 a.m., Mr. Leonardi was again awakened by a noise from a truck in the alley near his residence. Upon viewing the alley from his window, he observed a truck bearing the VHI name and logo again located approximately 20 feet from his apartment.

4. On the same day, Mr. Leonardi completed, signed, and submitted a Trash Noise Complaint Form to DCRA alleging that on December 21, 2011, at 5:50 a.m., a truck bearing the VHI name and logo collected waste in the alley between his residence and the Restaurant. PX 103
5. Mr. Leonardi signed both Noise Complaints under penalty of perjury and stated that he had viewed both incidents from his apartment 20 feet from VHI's truck.
6. After receiving Mr. Leonardi's complaints, Investigator Dedrick visited the alley behind the Restaurant, which the Noise Complaints identified as the VHI truck's location on December 16th and December 21st.
7. Mr. Dedrick further observed two trash containers bearing VHI decals in the alley behind the Restaurant.
8. VHI has a contract with the Restaurant to collect its trash at the Property. The contract provides an 8:00 a.m. pick-up time. PX 200.
9. As reflected in an extract of the D.C. Zoning Map covering Mr. Leonardi's residence and the Restaurant, Mr. Leonardi's apartment is in an R-5 residential zone, while the Restaurant and the VHI trash containers, across the alley from Mr. Leonardi's residence, are in a C-2-A commercial zone. PX 105(B).
10. Using a measuring wheel, Inspector Dedrick measured the distance from the VHI trash containers in the alley behind the Restaurant to the center of the alley, which is the boundary between the commercial and residential zones depicted in the relevant Zoning Map. *Id.* The total distance from the VHI trash containers to the residential zone is 39 feet.

11. Based upon the above findings, VHI operated a refuse collection vehicle within three hundred feet of a residential zone before 7:00 a.m. on both December 16, 2011, and December 21, 2011.

12. In each of the following cases, OAH found that VHI violated the Regulation on the date indicated:

- a) Case No. 2011-DCRA- S702410 – Violation Date: February 20, 2011
- b) Case No. 2011-DCRA- S702474 – Violation Date: February 21, 2011
- c) Case No. 2011-DCRA- S702411 – Violation Date: March 13, 2011
- d) Case No. 2011-DCRA- S702504 – Violation Date: June 8, 2011
- e) Case No. 2011-DCRA-S702513 – Violation Date: July 24, 2011
- f) Case No. 2011-DCRA-S702514 – Violation Date: August 9, 2011
- g) Case No. 2011-DCRA-S702519 – Violation Date: August 28, 2011

III. Conclusions of Law

VHI is charged with twice violating 20 DCMR 2806.2, which in relevant part provides:

No person shall operate or permit the operation of any refuse collection vehicle in, or within three hundred (300) feet of, any residential, special purpose, or waterfront zone, at nighttime on any day of the week. The terms “operate” and “operation” in this section shall mean the stopping of the vehicle and the collection of trash by the refuse vehicle.

For the purpose of this Regulation, “nighttime” is defined as the hours from 9:00 p.m. to 7:00 a.m. and “residential, special purpose, or waterfront zones” are as shown, defined, and bounded on the zoning map of the District of Columbia. 20 DCMR 2799.1.

To prevail on both charges, the Government must establish by a preponderance of the evidence that Respondent’s vehicle collected trash within 300 feet of a residential zone, as

depicted on the zoning map, during the prohibited hours on both December 16, 2011, and December 21, 2011. Mr. Leonardi testified that when he was awakened by a noise outside his residence at 6:00 a.m. on December 16th and 5:50 a.m. on December 21st, he observed a VHI truck in the alley approximately 20 feet away. DCRA also offered as evidence Mr. Leonardi's signed and dated complaints that supported his testimony.

I also credit Investigator Dedrick's uncontroverted testimony on two key points concerning the location of the VHI vehicle and its trash containers in the alley. First, Investigator Dedrick testified that VHI's trash containers are maintained in the alley behind the Restaurant, which Mr. Leonardi identified as the trucks' location and Investigator Dedrick referred to as "1511 U Street, N.W. – rear" in the Notices of Infraction. Second, I credit Investigator Dedrick's testimony, supported by the Zoning Map, that the alley's center is the boundary between a commercial and residential zone and that the distance from VHI's trash containers in the commercial zone to the residential zone boundary is 39 feet.

. Mr. Burrell testified that VHI's contract with the Restaurant requires it to collect its trash at 8:00 a.m. But, this contractual requirement lends little to bolster VHI's claim that its driver did not collect trash before 7:00 a.m., since the issue at hand is precisely whether the driver violated the Regulation, and by extension VHI's contract. A driver violating the law would presumably have even less qualms about violating VHI's contract.

Mr. Burwell also maintained that because the Government's photographs did not depict VHI engaging in trash collection, it failed to prove its case. However, the evidence did establish that on both occasions: (1) Mr. Leonardi was awakened by noise from a truck; (2) he observed a truck bearing the VHI name and logo in the alley between his apartment and the Restaurant;

(3) Mr. Leonardi filed a sworn “trash noise” complaint; (4) the Restaurant is a VHI customer; (4) trash containers bearing VHI’s decal were located in the alley behind the Restaurant; and (5) Mr. Burwell offered no other explanation for VHI trucks being in the alley before 7:00 a.m. From these facts, it is reasonable to infer that VHI’s trucks stopped to collect trash at the times, dates and location alleged in the NOIs.

Based upon my findings of fact and the above analysis, I conclude that DCRA proved by a preponderance of the evidence that on December 16, 2011, and December 21, 2011, VHI operated a refuse collection vehicle within 300 feet of a residential zone before 7:00 a.m. in violation of the Regulation.

The scheduled fine for a first offense of 20 DCMR 2806.2 is \$1,000. 16 DCMR 3310.2(f) and 16 DCMR 3201.1(b)(1). But the Government alleged that Respondent committed four previous infractions and sought an enhanced \$8,000 fine for each violation. 16 DCMR 3201.1(b)(4). Under 16 DCMR 3201.2(a), an infraction is a repeat offense and carries enhanced penalties if “the infraction is a violation by the same person of the same provision of a law or rule committed within 3 years following the initial infraction.” The Government established that Respondent violated the Regulation on February 20, 2011, February 21, 2011, March 13, 2011, June 8, 2011, July 24, 2011, August 9, 2011 and August 28, 2011. Therefore, Respondent’s violations on December 16, 2011, and December 21, 2011, were Respondent’s eighth and ninth violations, respectively, within *less than a year* following the initial February 20, 2011 violation. Accordingly, I will impose a fine of \$8,000 for each violation and find Respondent liable for fines totaling \$16,000.

IV. Order

Based on the above findings of fact, conclusions of law, and the entire record in this matter, it is this _____ day of _____ 2012:

ORDERED, that Respondent is **LIABLE** for violating the Regulation as alleged in NOI Nos. S702640 and S702642; and it is further

ORDERED, that Respondent shall pay fines totaling **SIXTEEN THOUSAND DOLLARS (\$16,000)** in accordance with the attached instructions within 20 calendar days of the date of service of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if the Respondent fails to pay the above amount in full within 20 calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1½ % per month or portion thereof, starting 20 days from the date of mailing of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits, pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondent, pursuant to D.C. Official Code § 2-1802.03(i), and the sealing of Respondent's business premises or work sites, pursuant to D.C. Official Code § 2-1801.03(b)(7); and it is further

ORDERED, that the reconsideration and appeal rights of any person aggrieved by this Order are set forth below.

Louis J. Burnett
Administrative Law Judge

PAYMENTS

If a payment is required by this Order, to be properly credited to your case(s) the payment must be sent to the attention of the Clerk of the Office of Administrative Hearings. Payments are only accepted by check or money order and must be made payable to “D.C. TREASURER.” Enclose full payment and mail the check in an envelope with required postage to:

Clerk
Office of Administrative Hearings
One Judiciary Square
441 Fourth Street, NW
Washington, DC 20001-2714

IMPORTANT: Please do not call the D.C. Court of Appeals with questions about how to make any payments required under this Order. The D.C. Court of Appeals does not accept any payments in cases decided by the Office of Administrative Hearings. **If you have questions, please call the Clerk’s Office at the Office of Administrative Hearings on 202-442-9094.**

After an administrative law judge has issued a Final Order, a party may ask the judge to change the Final Order and ask the District of Columbia Court of Appeals to change the Final Order. There are important time limitations described below for doing so.

HOW TO REQUEST THE ADMINISTRATIVE LAW JUDGE TO CHANGE THE FINAL ORDER

Under certain limited circumstances and within certain time limits, a party may file a written request asking the administrative law judge to change a final order. OAH Rule 2828 explains the circumstances under which such a request may be made. Rule 2828 and other OAH rules are available at www.oah.dc.gov and at OAH's office.

A request to change a final order does not affect the party's obligation to comply with the final order and to pay any fine or penalty. If a request to change a final order is received at OAH **within 10 calendar days** of the date the Final Order was filed (**15 calendar days** if OAH mailed the final order to you), the period for filing an appeal with the District of Columbia Court of Appeals does not begin to run until the Administrative Law Judge rules on the request. **A request for a change in a final order will not be considered if it is received at OAH more than 120 calendar days of the date the Final Order was filed (125 calendar days if OAH mailed the Final Order to you).**

HOW TO APPEAL THE FINAL ORDER TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

Pursuant to D.C. Official Code § 2-1831.16(c)-(e), any party suffering a legal wrong or adversely affected or aggrieved by this Order may seek judicial review by filing a Petition for Review and six copies with the District of Columbia Court of Appeals at the following address:

Clerk
District of Columbia Court of Appeals
430 E Street, NW, Room 115
Washington, DC 20001

The Petition for Review (and required copies) may be mailed or delivered to the Court of Appeals, and must be received there within 30 calendar days of the mailing date of this Order, pursuant to D.C. App. R. 15(a)(2). There is a \$100 fee for filing a Petition for Review. Persons who are unable to pay the filing fee may file a motion and affidavit to proceed without the payment of the fee when they file the Petition for Review. Information on petitions for review can be found in Title III of the Court of Appeals' Rules, which are available from the Clerk of the Court of Appeals, or at www.dcappeals.gov.

Certificate of Service:

By First Class Mail (Postage Paid):

VHI Inc. Enterprises
c/o Walter Burrell (RA)
P O BOX 1824
Manassas, VA 20108

By Inter-Agency Mail:

Melinda Bolling
ATTN: David Lang
Dep't of Consumer and Regulatory Affairs
1100 4th Street, SW – 5th Floor
Washington, DC 20024

I hereby certify that on _____,
2012 this document was served upon the
parties named on this page at the address(es)
and by the means stated.

Clerk/Deputy Clerk